

press release, or to a party to a legal action.

*Information* includes data, reports, source, and other information. "Information" may be used to describe the whole or a portion of a submission of information.

*Summarized* means that individual incidents are not specifically described, but are presented in statistical or other general form.

*Voluntary* means that the information was not required to be submitted as part of a mandatory program, and was not submitted as a condition of doing business with the government. "Voluntarily-provided information" does not include information submitted as part of complying with statutory, regulatory, or contractual requirements, except that information submitted as part of complying with a voluntary program under this part is considered to be voluntarily provided.

**§ 193.5 How may I submit safety or security information and have it protected from disclosure?**

(a) You may do so under a program under this part. The program may be developed based on your proposal, a proposal from another person, or a proposal developed by the FAA.

(b) You may be any person, including an individual, a company, or an organization.

(c) You may propose to develop a program under this part using either the notice procedure in § 193.11 or the no-notice procedure in § 193.13.

(d) If the FAA decides to protect the information that you propose to submit it issues an order designating the information as protected under this part.

(e) The FAA only issues an order designating information as protected if the FAA makes the findings in § 193.7.

(f) The designation may be for a program in which all similar persons may participate, or for a program in which only you submit information.

(g) Even if you receive protection from disclosure under this part, this part does not establish the extent to which the FAA may or may not use the information to take enforcement action. Limits on enforcement action ap-

plicable to a program under this part will be in another policy or rule.

**§ 193.7 What does it mean for the FAA to designate information as protected?**

(a) *General.* When the FAA issues an order designating information as protected under this part, the FAA does not disclose the information except as provided in this part.

(b) *What findings does the FAA make before designating information as protected?* The FAA designates information as protected under this part when the FAA finds that—

(1) The information is provided voluntarily;

(2) The information is safety or security related;

(3) The disclosure of the information would inhibit the voluntary provision of that type of information;

(4) The receipt of that type of information aids in fulfilling the FAA's safety and security responsibilities; and

(5) Withholding such information from disclosure, under the circumstances provided in this part, will be consistent with the FAA's safety and security responsibilities.

(c) *How will the FAA handle requests for information under the Freedom of Information Act (FOIA)?* The FAA does not disclose information that is designated as protected under this part in response to a FOIA request.

(d) *What if the FAA obtains from another source the same information I submit?* Only information received under a program under this part is protected from disclosure under this part. Information obtained by the FAA through another means is not protected under this part.

(e) *Sharing information with other agencies.* The FAA may provide information that you have submitted under this part to other agencies with safety or security responsibilities. The agencies are subject to the requirements of 49 U.S.C. 40123 regarding nondisclosure of information. The FAA will give the information to another agency only if, for each such request, the other agency provides the FAA with adequate assurance, in writing, that—

(1) The agency has a safety or security need for the information, including the general nature of the need.

(2) The agency will protect the information from disclosure as required in 49 U.S.C. 40123, this part, and the designation. This includes a commitment that the agency will mark the information as provided in the designation.

(3) The agency will limit access to those with a need to know to carry out safety or security responsibilities.

(f) *What if the FAA receives a subpoena for the information I submit?* When the FAA receives a subpoena for information you have submitted under this part, the FAA contacts you to determine whether you object to disclosure of the information or you wish to participate in responding to the subpoena. If both you and the FAA determine that release of the information is appropriate, the information is released. Otherwise, the FAA will not release information designated as protected under this part unless ordered to do so by a court of competent jurisdiction.

**§ 193.9 Will the FAA ever disclose information that is designated as protected under this part?**

The FAA discloses information that is designated as protected under this part when withholding it would not be consistent with the FAA's safety and security responsibilities, as follows:

(a) *Disclosure in all programs.* (1) The FAA may disclose de-identified, summarized information submitted under this part to explain the need for changes in policies and regulations. An example is the FAA publishing a notice of proposed rulemaking based on your information, and including a de-identified, summarized version of your information (and the information from other persons, if applicable) to explain the need for the notice of proposed rulemaking.

(2) The FAA may disclose information provided under this part to correct a condition that compromises safety or security, if that condition continues uncorrected.

(3) The FAA may disclose information provided under this part to carry out a criminal investigation or prosecution.

(4) The FAA may disclose information provided under this part to comply with 49 U.S.C. 44905, regarding information about threats to civil aviation.

(b) *Additional disclosures.* For each program, the FAA may find that there are additional circumstances under which withholding information provided under this part would not be consistent with the FAA's safety and security responsibilities. Those circumstances are described in the designation for that program.

**§ 193.11 What is the notice procedure?**

This section states the notice procedure for the FAA to designate information as protected under this part. This procedure is used when there is not an immediate safety or security need for the information. This procedure generally is used to specify a type of information that you and others like you will provide on an on-going basis.

(a) *Application.* You may apply to have information designated as protected under this part by submitting an application addressed to the Docket Management System (DMS), U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590-0001 for paper submissions, and the DMS web page at <http://dms.dot.gov/> for electronic submissions. Your application must include the designation described in paragraph (c) of this section that you want the FAA to issue. You should not include in your application any information that you do not want available to the public. The FAA may issue a proposed designation based on the application or may deny your application.

(b) *Proposed designation.* Before issuing a designation under this section, based either on your application or the FAA's own initiative, the FAA publishes a proposed designation in the FEDERAL REGISTER and requests comment.

(c) *Designation.* The FAA designates information as protected under this part if, after review of the comments, the FAA makes the findings in § 193.7. The FAA publishes in the FEDERAL REGISTER an order designating the information provided under the program as protected under this part. The designation includes the following: